UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,783	12/30/1999	DONALD K. NEWELL	P6929/1020P6929	2707

57035 7590 08/25/2011

KACVINSKY DAISAK PLLC
C/O CPA Global
P.O. BOX 52050
MINNEAPOLIS, MN 55402

EXAMINER	
SHANG, ANNAN Q	

ART UNIT	PAPER NUMBER
2424	

NOTIFICATION DATE	DELIVERY MODE
08/25/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sbartl@kdfirm.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD K. NEWELL, DAVID W. DOERNER and
RAJIV CHOUDHARY

Appeal 2010-011596
Application 09/474,783
Technology Center 2400

Before KRISTEN L. DROESCH, GREGORY J. GONSALVES and
DAVID M. KOHUT, Administrative Patent Judges.

DROESCH, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek review under 35 U.S.C. § 134(a) of a final rejection of claims 1, 4-7 and 12-25[1]. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

BACKGROUND

Appellants' invention is related to a system for controlling the use of broadcast content utilizing control information embedded in the broadcast content. Spec. p. 1, ll. 5-6; p. 2, ll. 20-25; Abs.

Claim 1 is illustrative and reproduced below:

> A system comprising a receiver in communication with a source of broadcast content and coupled to a playback device and a storage device, the receiver comprising a data interface having an Internet Protocol (IP) data module to process a pay-per-use IP television broadcast stream comprising IP encapsulated data, the receiver to control the use of received broadcast content through the playback device and the storage device in accordance with a descriptor embedded in the received broadcast content, the descriptor to indicate whether the storage device may store the received broadcast content prior to viewing and without reproducing the received broadcast content, and once stored, a number of times the playback device may reproduce the received broadcast content.

The Examiner relies on the following prior art:

Horton	4,945,563	Jul. 31, 1990
Russo	5,619,247	Apr. 08, 1997
Gotwald	5,987,518	Nov. 16, 1999

[1] Claims 2, 3 and 8-11 have been cancelled.

Claims 1, 4-7 and 12-25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gotwald, Horton and Russo.

ISSUES

Did the Examiner incorrectly find that the applied prior art describes a pay-per-use Internet Protocol (IP) television broadcast stream?

Did the Examiner incorrectly find that the applied prior art describes a descriptor indicating the number of times the playback device may reproduce the received broadcast content?

Did the Examiner incorrectly find that the applied prior art describes a descriptor indicating whether the storage device may store received broadcast content prior to viewing and without reproducing the content?

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments (Appeal Brief[2] and Reply Brief[3]). Appellants argue the rejection of claims 1, 4-7 and 12-25 together. App. Br. 11-14; Reply Br. 11-14. We disagree with Appellants' arguments that the claims 1, 4-7 and 12-25 are not obvious over Gotwald, Horton and Russo. We adopt as our own the findings and reasons set forth in the Examiner's Answer and the Office Action from which this Appeal is taken. We concur with the conclusion reached by the Examiner and provide the following additional analysis.

Appellants first argue that Gotwald, Horton and Russo do not teach or suggest a pay-per-use Internet Protocol (IP) television broadcast stream as recited in claim 1. App. Br. 12; Reply Br. 12. Appellants argue that

[2] Refers to the Corrected Appeal Brief filed 04 March 2010.
[3] Refers to the Reply Brief filed 17 November 2008.

contrary to the Examiner's findings Gotwald only describes the encapsulation of IP data within a standard MPEG2 video stream and does not describe an IP stream. App. Br. 12; Reply Br. 12.

We are not persuaded that the meaning of an IP stream should be so narrowly construed such that it excludes IP data embedded in streams of other types of data. "[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Appellants do not direct us to an explicit definition in the written description for an IP stream or a pay-per-use IP television broadcast stream. Instead, Appellants' Specification discloses that the broadcast stream may comprise digital content transmitted in accordance with any of a large number of well-known protocols, including but not limited to MPEG2 and IP. Spec. p. 3, l. 26-p. 4, l. 1. Appellants' Specification further discloses that in such an implementation, digital content can be transmitted as encapsulated data, such as IP data included within (i.e., "tunneled" within) private sections of an MPEG2 data stream. Spec. p. 4, ll. 1-3.

Consistent with Appellants' Specification, the broadest reasonable meaning for an IP stream or pay-per-use IP television broadcast stream includes encapsulated IP data within an MPEG2 data stream. Since Gotwald describes encapsulation of IP data within a standard MPEG2 video stream,

as acknowledged by Appellants (App. Br. 12; Reply Br. 12), Gotwald meets the claim limitations.

Next, Appellants argue that the applied prior art does not teach, suggest or disclose indicating "a number of times the playback device may reproduce the received broadcast content" as recited in independent claim 1. App. Br. 12, Reply Br. 12-13. Appellants dispute the Examiner's finding that Russo meets the claim limitations, arguing that Russo's description of allowing a selected program to be viewed as many times as desired for a predetermined period of time is different than restricting "a number of times the playback device may reproduce the received broadcast content." App. Br. 12 (citing Ans. 8); Reply Br. 13.

Appellants' arguments that Russo does not describe the disputed limitations are not persuasive. Consistent with the Examiner's findings, one with ordinary skill in the art at the time the invention was made would have understood that: 1) each program that can be viewed takes up a specific length of time; 2) allowing a selected program to be viewed as many times as desired over a predetermined time period also means that the program may be viewed only a certain number of times over the predetermined time period; and 3) the number of times that a selected program can be reproduced or viewed is also predetermined based on the selected program length and the predetermined time period allotted for viewing. As a result, one with ordinary skill in the art at the time of the invention would have also understood that Russo describes limiting the number of times the playback device may reproduce the received broadcast content.

We are also unpersuaded by Appellants' argument that Russo teaches away from limiting the number of times broadcast content may be reproduced. App. Br. 12; Reply Br. 13. Appellants do not meaningfully explain why Russo suggests that any developments flowing from its disclosure would be unlikely to produce the objective of Appellants' invention. See In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994).

Last, Appellants argue that the applied prior art does not teach, suggest or disclose "a descriptor embedded in the received broadcast content, the descriptor to indicate whether the storage device may store the received broadcast content prior to viewing and without reproducing the received broadcast content" as recited in independent claim 1. App. Br. 13; Reply Br. 13. Appellants argue that Horton only teaches a view only, view and tape for fee, and view and tape for free modes. App. Br. 13; Reply Br. 13-14 (citing Horton col. 3, ll. 38-67). Appellants argue that each of these modes "involves viewing the descrambled television program" and "is different from 'a descriptor embedded in the received broadcast content, the descriptor to indicate whether the storage device may store the received broadcast content prior to viewing and without reproducing the received broadcast content.'" App. Br. 13.

Appellants' arguments are unpersuasive. Contrary to Appellants' arguments, Horton's description is not limited to view only, view and tape for fee, and view and tape for free modes. Horton also describes that for the purpose of enhancing safety and convenience of the system, the decode circuitry 28 has a direct access line through the conductor 48 to VCR 44 so that the program could be encoded to automatically initiate recording. Col.

4, ll. 1-4; Fig. 2. One with ordinary skill in the art at the time the invention was made would have understood that the television program encoded to automatically initiate recording and the provision of the direct access line from the decoder 28 to the VCR 44 enables the TV program to be recorded by the VCR 44 without viewing and allows the TV program to be reproduced or played back by the VCR at a later convenient time.

For all these reasons, we sustain the rejection of claims 1, 4-7 and 12-25 as obvious over Gotwald, Horton and Russo.

DECISION

We AFFIRM the rejection of claims 1, 4-7 and 12-25 under 35 U.S.C. § 103(a) as unpatentable over Gotwald, Horton and Russo.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

dw